

Message Text

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ORIGIN L-03

INFO OCT-01 EUR-12 ISO-00 INR-07 /023 R

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R 101536Z SEP 76

FM SECSTATE WASHDC

TO AMEMBASSY BRUSSELS

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FOR MARK LORE

E.O. 11652: N/A

TAGS: EGEN, PFOR, NL

SUBJECT: AMERICAN LAWYERS IN BELGIUM:FEN COVERAGE OF
THIRD-COUNTRY NATIONAL

REF: LORE-WILLIS TELECON

1. WE HAVE REVIEWED ABOVE-MENTIONED MATTER IN LIGHT OF
INFORMATION AVAILABLE TO US AND HAVE TENTATIVELY CONCLUDED
THAT FEN TREATY DOES NOT REPEAT NOT REQUIRE GOB TO PROVIDE
THIRD-COUNTRY NATIONAL WITH A PROFESSIONAL CARD. WE BE-
LIEVE QUESTION IS A COMPLEX ONE AND ARE PREPARED TO RE-
VIEW IT AGAIN IF ADDITIONAL INFORMATION IS PRESENTED
WHICH COULD JUSTIFY DIFFERENT CONCLUSION. YOU ARE FREE
TO DISCUSS CONTENTS OF THIS CABLE WITH THE LAW FIRM AND
ARE ENCOURAGED TO PROVIDE US WITH YOUR COMMENTS.

2. KEY QUESTION IN OUR VIEW IS WHETHER FIRM--U.S. ENTER-
PRISE UNDER ARTICLE 6(4)--IS BEING DISCRIMINATED AGAINST
VIA-A-VIS COMPARABLE BELGIAN FIRM BY GOB'S FAILURE TO GRANT
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PROFESSIONAL CARD TO SWISS NATIONAL. TREATY REQUIRES

NATIONAL TREATMENT AS THE STANDARD. FROM INFORMATION AVAILABLE HERE IT APPEARS THAT GOB WOULD NOT GRANT PROFESSIONAL CARD TO SWISS NATIONAL EMPLOYED BY BELGIAN LAW

FIRM. WE DO NOT BELIEVE FEN TREATY PERMITS U.S. FIRM IN BELGIUM TO REQUEST MORE FAVORABLE TREATMENT THAN THAT WHICH WOULD BE ACCORDED A BELGIAN FIRM, EVEN THOUGH IMPACT ON THIS FIRM (BECAUSE OF FACT THAT SWISS NATIONAL IS ONLY RESIDENT PARTY) IS MORE PREJUDICIAL THAN IMPACT ON BELGIAN FIRM.

3. WE ARE AWARE THAT AREA OF PROFESSIONAL PRACTICE IN FOREIGN COUNTRIES IS A MOST COMPLICATED ONE AND MUST BE MINDFUL NOT ONLY OF WHAT WE ASK THE BELGIANS IN THIS CONTEXT BUT OF WHAT WE WOULD BE INCLINED TO PERMIT HERE IF THE SHOE WERE ON THE OTHER FOOT. ARTICLE 6(6) SPECIFICALLY ALLOWS IMPOSITION OF "SPECIAL FORMALITIES" WHICH WOULD SEEM TO INCLUDE ISSUANCE OF THESE CARDS, AND WE ARE NOT INCLINED TO CONSIDER THE REQUIREMENT OF THESE CARDS AS DISCRIMINATORY AGAINST AN ENTERPRISE SIMPLY BECAUSE IMPACT IN A PARTICULAR CASE WHERE A THIRD-COUNTRY NATIONAL IS INVOLVED MAKES IT MORE DIFFICULT FOR A FIRM TO DO BUSINESS. IN FACT, "SPECIAL FORMALITIES" LANGUAGE IS INCLUDED IN AMERICAN FCN TREATIES TO COVER SITUATION WHERE STATE OR FEDERAL LAW REQUIRES AMERICAN CITIZENSHIP FOR MEMBERS OF BOARDS OF DIRECTORS. (WE ASSUME IN THIS RESPECT THAT SHOULD AN AMERICAN CITIZEN BE DESIGNATED A RESIDENT PARTNER OF THE FIRM THERE WOULD BE NO PROBLEM IN OBTAINING THE NECESSARY PROFESSIONAL CARD.)

4. DEPT ASSUMES THAT FIRM HAS DISCUSSED MATTER WITH BELGIAN AND/OR SWISS AUTHORITIES AND IS CONVINCED THAT GOB WILL NOT ISSUE PROFESSIONAL CARD TO SWISS CITIZEN ON BASIS OF BELGIAN/SWISS TREATY OR OTHER BILATERAL ARRANGEMENTS. WE ALSO ASSUME THAT FOR ONE REASON OR ANOTHER IT WOULD BE IMPRACTICAL FOR A CARD TO BE ISSUED IN NAME OF AMERICAN CITIZEN ASSOCIATE OR SUBORDINATE MEMBER.

5. WE WOULD NOT RECOMMEND THAT AT PRESENT TIME EMBASSY DISCUSS THIS MATTER WITH GOB AUTHORITIES. IF EMBASSY IS LIMITED OFFICIAL USE

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QUERIED, YOU COULD SAY THAT WHILE WE DO NOT FEEL THAT THIS PARTICULAR SITUATION IS CLEARLY COVERED BY THE TREATY, E.G., WE DO NOT THINK TREATY REQUIRES GOB TO ISSUE PROFESSIONAL CARD TO SWISS NATIONAL, IT IS NECESSARY TO RECOGNIZE THAT FAILURE TO ISSUE CARD WILL IN FACT MAKE IT DIFFICULT OR IMPOSSIBLE FOR THIS AMERICAN ENTERPRISE TO OPERATE IN BELGIUM, AT LEAST AS PRESENTLY ORGANIZED. WHETHER THIS APPROACH WOULD BE HELPFUL TO AMERICAN LAW

FIRM'S EFFORTS IS SOMETHING ONLY YOU AND THEY CAN PROPERLY
ASSESS. -
KISSINGER

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: TREATY COMPLIANCE, TRADE DISCRIMINATION, ATTORNEYS, FOREIGN INTEREST REPRESENTATION
Control Number: n/a
Copy: SINGLE
Draft Date: 10 SEP 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: morefirh
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976STATE224186
Document Source: CORE
Document Unique ID: 00
Drafter: JWWILLIS:NMC
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760342-0886
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760972/aaaacjhw.tel
Line Count: 118
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN L
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: n/a
Review Action: RELEASED, APPROVED
Review Authority: morefirh
Review Comment: n/a
Review Content Flags:
Review Date: 01 APR 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <01 APR 2004 by BoyleJA>; APPROVED <02 APR 2004 by morefirh>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: AMERICAN LAWYERS IN BELGIUM:FEN COVERAGE OF THIRD-COUNTRY NATIONAL
TAGS: EGEN, PFOR, NL, US, BE
To: BRUSSELS
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006